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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/544,084	04/06/2000	Asgeir Saebo	CONLINCO-4286	7973
72960	7590	08/10/2009		
Casimir Jones, S.C. 440 Science Drive Suite 203 Madison, WI 53711			EXAMINER WANG, SHENGJUN	
			ART UNIT	PAPER NUMBER
			1617	
			MAIL DATE	DELIVERY MODE
			08/10/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/544,084

**Applicant(s)**

SAEBO ET AL.

**Examiner**

Shengjun Wang

**Art Unit**

1617

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 19-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18, 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date 5/30/2009

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on May 13, 2009 has been entered.

***Claim Rejections 35 U.S.C. 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al. (US 5,760,082, of record), Cook et al. (US 5,914,346), in view of Cain et al. (WO 97/18,320, of record) and Baltes et al. (US 3,162,658, of record).

Cook '082 teaches a food product containing conjugated linoleic acids (CLA), their esters, salts or mixtures. The linoleic acid compounds may be from corn oil, safflower etc. the food products may further containing vitamins. The conjugated linoleic acid may be in the forms of free acid, non toxic salt or esters, such as triglycerides. See, particularly, the abstract, column 1, lines 10-13, lines 49-60. Column 2, lines 51-67, Examples 2- 5. Cook '082 teaches that

employment of alkali catalyst for making conjugated linoleic acid moiety for linoleic acid moiety is known in the art and may be easily modified for food product by utilize only food grade reagents. See, particularly, example 1, in column 2, lines 20-53. Cook further teaches that conjugated linoleic acid may be incorporated into various food products. See column 5, lines 6-14. Cook '346 teaches that non-glycerol ester, such as methyl ester, of CLA is similarly useful as the free acid and glycerol esters. See, col. 2, lines 32-37, col. 3, lines 31-45.

Cook does not teach expressly to employ alcoholic catalyst for isomerization of linoleic acid to obtain CLA in non-glycerol ester forms, or to employ antioxidants such as vitamin E in the food products or the conjugated linoleic acid compounds are produced by the method herein, e.g., treating linoleic acid with potassium methylate, or particularly reduce the volatile organic compounds to the level of 5 ppm.

However, Cain et al. teaches that it is well-known in the art that antioxidants, such as vitamin E or BHT, is known to be useful in food product containing conjugated linoleic acid compounds, e.g., conjugated linoleic acid ester. See, particularly, page 6, lines 29-36, the examples 1-20 and the claims. Cook teaches that any solvent in CLA should be removed under vacuum, and CLA is stored in a condition no oxidation would happen (under Argon, in dark and low temperature) before the CLA could be used in food product. See, particularly, column 2, lines 40-47. Baltes teach that isomerization of linoleic acid compounds to conjugated linoleic acid compounds by alcoholate catalysts, such as potassium methylate is well known. Baltes particularly teach the isomerization of methyl ester of linoleic acid obtained from linoleic acid containing oil (soybean oil). The methyl ester is double distilled, therefore, any impurity, including glycerol and ester of glycerol were removed. See, particularly, the examples 2-4 and

the claims. The employment of alkali monohydric alcoholate has advantage that isomerization is possible without using more than stoichiometrical amounts of alkali metal alcoholate. See column 2, lines 31-35.

3. Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed invention was made, to employ alcoholate catalyst, such as potassium methylate, for isomerization of linoleic acid in the forms of non-glycerol ester to obtain CLA ester as taught by Baltes, and to incorporate conjugated linoleic acid derivatives, including esters, as well as antioxidant in a food product, wherein the CLA is free of volatile organic compounds and free of oxidation.

4. A person of ordinary skill in the art would have been motivated to employ alcoholate catalyst, such as potassium methylate, for isomerization of linoleic acid in the forms of non-glycerol ester to obtain CLA ester as taught by Baltes, and to incorporate conjugated linoleic acid derivatives, including esters, as well as antioxidant in a food product, wherein the CLA is free of volatile organic compounds and free of oxidation because alcoholate catalysts, such as potassium methylate, are well-known to be useful for isomerization of linoleic acid to CLA, and CLA is known to be sensitive to oxidation and antioxidant are known to be useful along with conjugated linoleic acid compounds in food products. Further, CLA ester, including both glycerol and non-glycerol esters, are known to be useful in food products. Regarding the limitation about the method to obtain the conjugated linoleic acid, note a method of making ingredients is not seen to render patentable weight to a method which employs such ingredients, absent evidence to the contrary. This is particularly true if the method of making the ingredients is a well-known process, e.g., employ alkali monohydric alcoholate for making conjugated linoleic acid. A

process of making a composition by simply combining or mixing the known ingredients is seen to be within the skill of the artisan. Further, purifying CLA composition by using silica gel (adsorbent) is seen to be obvious since silica gel is well known for purification and separation purpose. Having a limitation of the volatile organic compound (VOC) in food product (whether it is the limitation after storage or before storage) is considered an optimization of a result effective parameter, which is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204 USPQ 215.

### ***Response to the Arguments***

Applicants' amendments and remarks submitted May 13, 2009 have been fully considered, but are not persuasive. Particularly, it is noted that Baltes et al. teach the removal of any impurity from the methyl ester before the catalytic reaction. See the rejections set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Shengjun Wang/

Primary Examiner, Art Unit 1617

5.